



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

Nathan Block
Senior Counsel, Litigation
BP America Legal
501 Westlake Park Boulevard
Houston, TX 77079

December 18, 2018

RE: Star Lake Canal Superfund Site
EPA Determination of Liability

Dear Mr. Block:

The purpose of this letter is to provide you with the Environmental Protection Agency's (EPA) decision on a determination of your client's (BP America, hereinafter "BP") potential liability at the Star Lake Canal Superfund Site (Site) after thoroughly reviewing and considering additional information provided by you and other potentially responsible parties (PRPs). To summarize, the EPA's earlier determination that your client may be a potentially responsible party (PRP) under Section 107(a) of the Comprehensive Environmental Response and Compensation Act (CERCLA), 42 U.S.C. 9601, *et. seq.*, still stands.

On November 1, 2017 the EPA issued BP a General Notice Letter (GNL) and a CERCLA Section 104(e) Information Request. The EPA issued the GNL based on information provided to the EPA by the Star Lake Canal Cooperating Parties (SLCCP), a group of PRPs who have entered into a settlement agreement to perform a remedial design at the Site. It is the EPA's understanding that this information has already been shared with you. On February 8, 2018 you met with the EPA Site Team to discuss the scope of the CERCLA 104(e) Information Request and to provide certain information concerning the hydrology of Molasses Bayou within the Site. In August of 2018 you subsequently provided the final phase of your response to the CERCLA 104(e) Information Request, which also included information in support of your hydrology claim.

On March 14, 2017 the SLCCP met with the EPA to discuss the Molasses Bayou hydrology, including tidal fluctuations. The SLCCP followed up its meeting by subsequently providing additional information, including documentation of the tidal influence on Molasses Bayou. It is the EPA's understanding that the SLCCP also met with you and provided you with the same information. For your convenience, the EPA is including a copy of this information as an enclosure to this letter.

The EPA analyzed, reviewed and evaluated all of the additional information provided by you and the SLCCP, as well as information found in previous PRP responses to CERCLA 104(e)

Information Requests. Based on this evaluation, the EPA has concluded that its previous decision that BP may be potentially liable as a PRP under CERCLA 107(a) will not change.

Firstly, the evidence of historical discharges from BP's facility (now operated by Total) to Molasses Bayou is significant. Historic aerial photographs clearly show a channel from the facility leading toward the MB-56 area within Molasses Bayou. This area has higher concentrations of contaminants commonly found at refinery operations than in other areas of Molasses Bayou. Although historical aerial photographs show the channel has been silting in since the construction of the boat canal, those same photographs still show a pathway from the refinery to Molasses Bayou. Even if the channel or pathway had completely diminished, the historical discharges and impact before that event must still be considered.

Secondly, during our meeting of February 8, 2018 your expert acknowledged that, despite the construction of the boat canal, the bayou nonetheless experiences tidal fluctuations from the Gulf. Although tidal fluctuation was not discussed as much as it should have been during our meeting, our review of available information indicates tidal influence is a significant factor in the transport of contaminated sediment and surface water at the Site. The September 2013 Record of Decision (ROD) for the Site specifically mentions tidal fluctuation affecting Molasses Bayou. Indeed, the ROD makes the following findings:

- "The bayou... is tidally inundated." (ROD at page 13)
- "The [bayou's] waterway is influenced by tidal flow from the Neches River." (ROD at page 13)
- "Water surface elevations in Jefferson Canal, Molasses Bayou and the lower portion of Star Lake Canal are influenced by the stage of the Neches River and by tidal influences from the nearby Gulf of Mexico. (ROD at pages 13 and 14)
- "Water elevations in the marsh and canal exhibit a maximum daily fluctuation of approximately 0.75 feet due to the tide." (ROD at page 14)

Most telling, however, are aerial photographs provided by the SLCCP. The aerials, taken on different dates, show a boom separating the north-south boat canal from the eastern portion of Molasses Bayou. The photographs clearly show the boom being pushed eastward toward the interior of the bayou on many occasions, dispelling the notion that any water flow continuously flows outward from the interior and towards the boat canal. It is our understanding that the SLCCP has already presented you these same aerial photos.

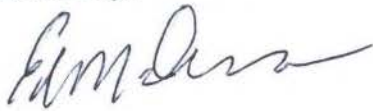
In conclusion, the EPA stands by its initial determination that BP may be potentially liable as a PRP under CERCLA Section 107(a) at the Site. As such, the EPA urges you to communicate with the SLCCP to cooperate and participate in the ongoing remedial design work being performed at the Site. The EPA's initial General Notice letter provides contact information for the SLCCP to engage in that effort. In addition, the EPA urges your client to also sign on to the ongoing September 26, 2016 Administrative Order on Consent (AOC) for Remedial Design for the Site and to return the signed and dated signature page to me within 45 days of receipt of this

letter. You may also return a PDF copy of the signed signature page electronically to me. A PDF copy of the AOC and signature page is provided for your convenience.

The EPA also intends to contact you and the other PRPs in future settlement talks with the goal of reaching a negotiated consent decree that will address a remedial action at the Site and recovery of past costs incurred. We look forward to working with you in this regard.

Should you have any questions, please feel free to contact me at (214) 665-8035 and at quinones.edwin@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edwin Quinones', written in a cursive style.

Edwin Quinones
Senior Assistant Regional Counsel

Signature Page for Administrative Order on Consent Regarding the Star Lake Canal Superfund Site

Date

BP America

Name:

Title:

Address:

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (Print)

Title:

Address:

Phone:

Email: